

The Brooklyn Hospital-Caledonian Hospital and Local 1199, Drug, Hospital and Health Care Employees Union, Retail, Wholesale and Department Store Union, AFL-CIO. Case 29-CA-13793

April 30, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On July 12, 1990, Administrative Law Judge Steven Davis issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed cross-exceptions and a brief in support of its cross-exceptions and answering the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions¹ and briefs and has decided to affirm the judge's rulings, findings,² and conclusions³ and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Brooklyn Hospital-

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² In adopting the judge's finding that the Respondent established a reasonable basis for its different treatment of Norman Treyball, who was discharged for sleeping while alone in the boiler room, and Sigismund Peters, who was merely suspended for 3 days for sleeping while on duty in the boiler room, we particularly rely on the fact, noted by the judge, that no high pressure boilers were running when Peters was found sleeping. A licensed stationary engineer is required to operate the Respondent's high pressure boilers, which must be monitored constantly because if the water level were too low an explosion could occur, and if the water level were too high a flood could occur or steam necessary for the operation of the sterilizers in the operating rooms could be lost. One high pressure boiler was running when Treyball, the sole licensed stationary engineer on duty during the day shift, was found sleeping. No high pressure boilers were in operation, however, when Peters, a fireman on the night shift who was not a licensed stationary engineer, was found asleep and disciplined, but not fired, in December 1985.

³ The judge concluded that the Respondent interfered with the employees' Sec. 7 rights to engage in and be informed of the Union's organizing campaign by confiscating union literature from the employees' work area. The Respondent asserts in its exceptions that merely discarding union literature is not a violation of the Act. We find no merit in this exception. Employees generally have a protected right under Sec. 7 of the Act not only to possess, but also to display, union materials at their place of work, absent evidence that the employer restricted employee possession of other personal items or that possession of union materials interfered with production or discipline. See *Dillingham Marine & Mfg. Co.*, 239 NLRB 904 (1978), *enfd.* 610 F.2d 319 (5th Cir. 1980). Because the Respondent apparently had no policy against employee retention of literature unrelated to the union, and because it is unlawful to impose disparate restrictions on prounion literature, we adopt the judge's finding that the Respondent's confiscation of union literature from the employees' work area violated Sec. 8(a)(1) of the Act.

Caledonian Hospital, Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

David Cohen, Esq., for the General Counsel.

Allan H. Weitzman and Samuel M. Kaynard, Esqs. (Proskauer Rose Goetz & Mendelsohn, Esqs.), of New York, New York, for the Respondent.

Martin Garfinkel, Esq. (Gladstein, Reif & Meginniss, Esqs.), of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Pursuant to a charge filed on December 1, 1988, by Local 1199, Drug, Hospital & Health Care Employees Union, Retail, Wholesale and Department Store Union, AFL-CIO (Local 1199), a complaint was issued against Brooklyn Hospital Caledonian Hospital (Respondent) on December 27, 1988. The complaint alleges essentially that during the course of an organizing campaign conducted by Local 1199 from the summer of 1988 through November 1988, Respondent unlawfully: (a) discharged employee Norman Treyball; (b) threatened its employees with discharge; (c) confiscated from its employees' work areas, leaflets and other literature which expressed support for Local 1199 and; (d) created an impression among its employees that their activities on behalf of Local 1199 were under surveillance by Respondent.

Respondent's answer denied the material allegations of the complaint, and on various dates in July and August 1989, a hearing was held before me in New York City on these allegations.¹ On the evidence presented in this proceeding, and my observation of the demeanor of the witnesses and after consideration of the brief filed by Respondent, and letter-brief filed by General Counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation having its principal office and place of business at 10 St. Paul's Place, Brooklyn, New York, has been engaged in the operation of a hospital, providing health care and related services. During the past year, Respondent has derived gross revenues in excess of \$250,000 from its operations, and has also purchased, and received at its facility directly from points located outside New York State, medical supplies valued in excess of \$50,000. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

¹ The hearing in this case was part of a consolidated hearing involving complaints in Cases 29-CA-13813, 29-CA-13842, and 29-CA-13933, and a representation proceeding in Case 29-RC-7143, 29-CA-7148, and 29-CA-7150. On the close of the consolidated hearing, the instant case was severed from the remainder of the cases, which involved the recognition by Respondent of unions other than Local 1199.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Norman Treyball was employed as a licensed stationery engineer at the Caledonian Hospital site from December 1981 to November 2, 1988, when he was discharged. He was employed on the day shift and worked from 7 a.m. to 3 p.m. His morning coffeebreak was to be taken from 9:30 to 9:50 a.m. Treyball's direct supervisors were Andrew Ford, plant supervisor, and Victor Sarkissian, supervisor in the engineering department. Those two individuals report to Barry Frankenstein, the director of engineering.

Treyball's duties consisted of maintaining all the equipment in the boiler room, located in the subbasement, which contained hot water tanks, vacuum pumps, circulating pumps and air compressors, two low pressure boilers and two high pressure boilers, called the Cleveland-Brooks and Teitesville. His responsibilities included making entries in the log book, taking readings from the gauges on the equipment, watching the pressure and water levels in the boilers, greasing the equipment, performing minor repairs, and doing preventive maintenance.

Treyball's Union Activities

The employees of Caledonian Hospital have not been represented by any labor organization. Treyball testified that in 1986 he was a very active supporter of Local 819, International Brotherhood of Teamsters. Local 819 had filed a petition to represent the service and maintenance employees of Caledonian. Local 1199 intervened in the representation proceeding, but thereafter, in 1987, disclaimed interest in that unit.

Treyball testified that he engaged in extensive activities in behalf of Local 1199, detailed below. He further stated that Supervisors Ford and Sarkissian spoke to him about the Union. The credibility determination in this case is difficult. On the one hand, Treyball recounted substantial daily solicitation of employees from the summer of 1988 until his discharge in November of that year, and on the other hand, the supervisors involved flatly denied any knowledge of Treyball's interest in or activities in behalf of Local 1199. They also denied engaging in the conversations attributed to them by Treyball.

Treyball's demeanor at hearing left much to be desired. He was argumentative with Respondent's counsel and chided him for his lack of knowledge of boiler room functions. Other aspects of his testimony are troubling. For example, he testified that he never received any warnings, but admitted on cross-examination that he received a final warning for being involved in an altercation with another employee. With respect to testimony concerning his discharge for sleeping, his defense was that he was on his coffeebreak. He first testified that he checked his watch and determined when his break would begin. He later testified, however, that he did not wear a watch on the day of the incident. Respondent correctly points out other inconsistencies in his testimony, for example, his first testimony that there were cold water tanks in the boiler room, and then his later testimony that there were none.

The testimony of Respondent's witnesses, particularly Victor Sarkissian, also leaves room for doubt. He was a foreman in the engineering department during the 7 years of Treyball's employ at the hospital, and worked during the

same day shift as Treyball. He was responsible for the direct supervision of Treyball's operation of the boilers. He testified that he never spoke to Treyball about wages, raises in pay, or benefits. He stated that he occasionally saw union literature in the boiler room, but he did not know whose it was and he did not ask. He admitted finding Treyball asleep in the boiler room four times in 1988. He reported only the final incident but did not make a written report of it as ordered by Engineering Director Frankenstein. He did not report the first three incidents and did not make a written record of the fourth because Treyball had a family which included eight children, and he felt sorry for him. It is highly unlikely that two individuals, working the same shift for so many years, would not have discussed anything concerning wages, pay raises, or benefits. This is especially so since apparently Sarkissian had a close relationship with Treyball, protecting him from discharge on four occasions because he sympathized with his family situation.

In the facts which follow, I have credited Treyball's account of his union activities, and the conversations he had with his supervisors concerning Local 1199. I have taken into consideration the difficulties I have had with Treyball's testimony, discussed above, and others set forth in Respondent's brief. Nevertheless, I do not believe that these minor inconsistencies and contradictions constitute fatal flaws to his believability as to his union activities and conversations concerning Local 1199. He stated, in some detail, his activities in behalf of Local 1199, and named those with whom he engaged in those activities. In addition, one aspect of his testimony, that he was actively engaged in distribution of union literature in the boiler room is confirmed in part by Supervisor Sarkissian who testified that on one or two occasions he observed union literature in the boiler room.

Treyball testified that following the election by Local 819, Local 1199 began organizing the employees of Caledonian Hospital. The organizing campaign began in the summer of 1988, and Treyball became a member of the steering committee in September 1988. Respondent admitted in its answer that beginning in September, Local 1199 engaged in organizing activities at Respondent's premises.

Treyball stated that his union activities in behalf of Local 1199 included distributing union authorization cards, leaflets and newspapers, and speaking to employees concerning benefits they would receive with Local 1199. He stated that he spoke to employees in the cafeteria each morning before he reported to the boiler room, and also conversed about the union with workers who visited the boiler room before his work day began, including housekeepers, carpenter, mason, electrician, plumber, painter, and general workers.² Treyball stated that he engaged in these activities on a daily basis, from the summer of 1988 to the time he was fired.

Treyball testified that he attempted to keep his union activities secret by speaking in a low tone of voice when supervisors were nearby. However, he also testified that he left union literature in the boiler room and told Victor Sarkissian in October 1988, that wages and benefits would improve with Local 1199. Apparently, therefore, Treyball's interest in

² Respondent cites this activity as an example of Treyball's unbelievability, arguing that he could not have his coffee in the cafeteria each morning and also have coffee at his desk in the boiler room. Treyball testified, however, that he had coffee "before work, I used to take it down . . . in the boiler room at my desk."

Local 1199 was well known to Sarkissian notwithstanding Treyball's efforts to remain low key.

In early October 1988, as he was talking about Local 1199 with his coworkers, Supervisor Andrew Ford told them to "break up the union meeting." Union cards were observed by Ford, who told the men that the Union is "garbage," and that regardless of the Union's presence, they must follow orders. Treyball also observed Supervisor Sarkissian throw union cards, which Treyball had left in the boiler room, into the garbage while cursing the union.

Both supervisors told Treyball several times that if they learned that he was working for the Union he would be fired very quickly. When Treyball spoke to Sarkissian about how wages and benefits would improve with the Union, Sarkissian told him that he (Treyball) would be fired before the Respondent would pay him \$20 per hour and he and the Union would be "out of here."³

Also at about that time, Sarkissian asked Treyball if he (Sarkissian) would lose his pension with Respondent if Local 1199 successfully organized the employees. Treyball showed him a union leaflet and told him that he would receive pensions from Respondent and from Local 1199.⁴ At the end of their 30-minute talk, Sarkissian stated that unions are liars and communists, and threw the union literature into the garbage.

One week before his discharge, Treyball was told by Sarkissian that the employees would be represented by Local 3. Treyball asked how that was possible, since "we are working on 1199." Sarkissian assured him that Local 3 is "going to be here. And you and that Local 1199 can go out the door together."

Three weeks later, Respondent recognized Local 3, International Brotherhood of Electrical Workers, as the representative of its engineering employees. As set forth above, that recognition has been alleged as unlawful in complaints issued by the Regional Office.

Treyball's Discharge

The following is a recitation of the facts concerning the incident which precipitated Treyball's discharge. As to this event, I have credited Respondent's witnesses. Their testimony is consistent and mutually corroborative. In addition, Treyball's version of the event does not materially contradict the critical parts of Respondent's witnesses' account. The major difference between the versions is that Treyball denies that he was sleeping. Even his account of the incident supports a finding that he was.

On October 26, 1988, Treyball began work at 7 a.m., at which time he made visual checks of the boiler room equipment for about 1 hour. One of the high pressure boilers was not operating properly and he worked on it, keeping it running, from about 8:25 a.m. until he took a break at 9:50 a.m. He sat in a chair, "relaxing" and described his "relaxation" as follows:

³ Respondent cites this conversation as an example of Treyball's lack of credibility. It argues that Sarkissian could not have made such a statement since Treyball was then earning \$19.75 per hour, and it is inconceivable that it would discharge an employee for a 25-cent-per-hour raise. However, there was no showing that Sarkissian knew or was told what Treyball's salary was at that time.

⁴ In evidence is a union leaflet which addresses the question of double pensions, which Treyball testified he showed to Sarkissian.

I figured it was a good time to get a smoke in. I didn't have any coffee break yet. . . . I said just close your eyes and relax, and that's what did. . . . I was having a cigarette listening [to the boilers], my eyes were open. I threw the cigarette down and I decided to relax more. I said see, it's a tough day, hot. I did some work, I said take a rest. My eyes were stinging. There were a lot of fumes coming from the parking lot, and I could smell the exhaust. I said close your eyes, and I was thinking about what I should do. . . .

Barry Frankenstein, the Director of Engineering, and Mark Nicola, an electrical supplier, walked into the boiler room at 10:10 a.m., and walked directly in front of Treyball. They observed Treyball asleep in the chair, his eyes closed and mouth open. Frankenstein also observed that one high pressure and one low pressure boiler were running. Frankenstein yelled and Treyball did not move. He and Nicola went into the storeroom, where he called Sarkissian and told him that Treyball was asleep with the high pressure boiler running.

Sarkissian went to the boiler room and found Treyball asleep with the two boilers running. He went to the storeroom and was told by Frankenstein to awaken Treyball. Sarkissian called his name twice and received no response. He then shook Treyball and he awakened. Sarkissian told him that Frankenstein saw him sleeping. Treyball protested that he was on his coffeebreak. The time then was 10:25 a.m.⁵ Frankenstein left the boiler room, telling Treyball that he wanted to see him in his office.

Treyball testified that Frankenstein had to walk in front of him to get to the storeroom, and he admitted not seeing Frankenstein on his way to the storeroom. He further admitted not seeing or hearing him because he had his eyes closed, and because of the high level of noise in the boiler room from the boilers operating. Treyball also conceded having his eyes closed for about 10 to 15 minutes.

Frankenstein discussed the matter with his supervisor, Juergen Luebker, the director of facilities, construction management, and safety. Frankenstein told Luebker that he wanted to discharge Treyball and Luebker agreed.

Later that day, Treyball reported to Frankenstein's office. Sarkissian was also present. Frankenstein presented Treyball with a report of the incident, which conformed with the account set forth above. The report noted that it was a "final warning." The box marked "discharge" was left blank. Treyball said that he was on break, was allowed to sleep while he was on break, the clock was broken, and was made sleepy by the medication he was taking and the cigarette he had smoked. He refused to sign the report.

Frankenstein then told Bill Myhre, manager of human resources, what had transpired. Myhre said that based on the corporate policy concerning sleeping, discharge would be appropriate. That policy states that sleeping during worktime is an offense which may result in summary discharge. Frankenstein stated that he defines working time for a stationary engineer as any time that he is not on a break, but even when the stationary engineer is on a break he is not allowed to sleep. Myhre told him that Treyball would be given an op-

⁵ An issue was raised about the time of the incident, with Treyball claiming that the clock on the boiler room wall did not keep accurate time. Inasmuch as Treyball testified that he relied on his watch, and not the malfunctioning clock, when he began his "rest" this matter requires no discussion.

portunity to explain the incident, and if the explanation was not acceptable, he would be fired. They met with Treyball on November 2. Treyball admitted that he was sleeping, and then said he was resting. Treyball mentioned that the clock was malfunctioning. Myhre then told him that he was discharged.

Analysis and Discussion

Treyball's testimony, which I have credited in part, establishes that he was an active, energetic supporter of Local 1199, who engaged in extensive activities in its behalf on Respondent's premises. Thus, beginning in the summer of 1988, Treyball joined Local 1199's steering committee, and for several months until his discharge regularly spoke to employees concerning the benefits of joining Local 1199, and distributed union literature. Respondent admits knowing that Local 1199 began organizing its employees in September 1988. I have also found that Respondent also became aware of Treyball's interest in and activities in behalf of Local 1199. Thus, Supervisors Ford and Sarkissian both spoke to Treyball about the Union. Ford told Treyball and his coworkers to break up the "union meeting" when he saw them speaking together; Sarkissian told Treyball that unions are liars and communists.

In addition, both supervisors told Treyball that if they learned that he was working for the Union he would be fired, and finally shortly before his discharge, when Treyball expressed his surprise at Sarkissian's announcement that Local 3 would be representing the workers and not Local 1199, Sarkissian replied that Treyball and Local 1199 would go out the door together. I find that these remarks to Treyball constituted threats to discharge him because of his activities in behalf of Local 1199, as alleged in the complaint. *Honeycomb Plastics Corp.*, 288 NLRB 413, 419 (1988).

With respect to the complaint allegation that Respondent confiscated union literature from its employees' work area, I find that Sarkissian threw such literature in the garbage, which Treyball had left in his work area. It is apparent that Sarkissian threw away the literature because it concerned union matters. He was not simply seeking to clean the work area, as suggested by Respondent. Sarkissian was observed cursing the Union while depositing the material in the trash. Accordingly, Sarkissian's actions interfered with the employees' Section 7 rights to engage in and be informed of the Union's organizing campaign, and therefore violated Section 8(a)(1) of the Act. *Photo-Sonics, Inc.*, 254 NLRB 567 (1981).

The complaint also alleges that Respondent, through Ford and Sarkissian, created an impression among its employees that their activities on behalf of the Union were under surveillance by Respondent. The only evidence which could possibly relate to this allegation are the statements of Ford and Sarkissian that if they learned that Treyball was working for the Union he would be fired. Inasmuch as such statements have been found to be threats in violation of Section 8(a)(1) of the Act, they need not be considered in connection with this allegation. There is no other evidence in support of this allegation and I will recommend that it be dismissed.

In sum, I find that Treyball's prominent and extensive activities in behalf of Local 1199 which were known to Respondent, when viewed against its animus toward that Union as expressed by supervisors Ford and Sarkissian, and when

combined with its unlawful threats of discharge of Treyball, and confiscation of union literature in his work area, compel the conclusion that General Counsel has made a prima facie showing that Treyball's union activities were a motivating factor in Respondent's decision to discharge him. *Wright Line*, 251 NLRB 1080 (1980).

Having made this finding, the burden of proof shifts to Respondent to prove that it would have discharged Treyball even in the absence of his union activities. *Wright Line*, supra.

Treyball was discharged for sleeping while alone in the boiler room with the boilers operating. He is not permitted to sleep or be away from the boiler room during his tour of duty without getting a relief person.⁶ Treyball conceded that he would be putting his license as a stationary engineer in jeopardy by sleeping on duty while the boilers were running. Treyball argued that he was on his break at that time, but the evidence establishes that he was found sleeping at about 10:20 a.m., after his break time had expired.⁷

Director of Engineering Frankenstein stated that the boilers must be watched continuously because, if the water level in the boiler was too low, an explosion could result, and if the level was too high, a flood could occur, or steam would be lost, which was needed for the sterilizers in the operating rooms and the hot water and heating systems used in the hospital. The high pressure boiler was primarily used to operate the sterilizers. These malfunctions could occur during the time that Treyball was asleep.

A licensed stationary engineer is required to operate the Respondent's high pressure Teitesville boiler. A license, issued by New York City, is obtained by working under the supervision of a licensed stationary engineer for 5 years, and then passing written and oral tests. Treyball was the only licensed stationary engineer on the day shift.

Respondent's evidence is that it discharged Treyball because he was asleep at a time when he was on duty, responsible for the monitoring and operation of the boilers. I have found that Treyball was asleep for at least 10 minutes in the boiler room, while the low pressure and Teitesville high pressure boilers were operating. Treyball's responsibilities as the sole licensed stationary engineer on duty in the hospital during the day shift when the boilers were required to supply heat, hot water and steam for the sterilization of surgical instruments required an exceptional degree of diligence and devotion to duty not only in order to provide the hospital and its health workers with the basic utilities needed to have the hospital operate properly by providing heat, hot water and sterilization capability, but also to protect the hospital building and its occupants, including its patients, to whom it owes a special duty, from the danger of explosion and flood which

⁶There was much testimony concerning whether Treyball had, in the past, been away from the boiler room without permission, and without having a relief person in the boiler room. Treyball admitted being told to return to the boiler room whenever he was found by Director of Engineering Frankenstein to be away from it, and also admitted that he would not want to leave the boiler room unattended. Moreover, the fact that Treyball had no relief person on the day he was found sleeping is not a defense to his sleeping on that occasion.

⁷The notice regarding breaks states that breaks "will be taken at the following times: 9:30 to 9:50." In practice, employees were given until 10 a.m. to complete their breaks. Accordingly, Treyball should not have been on his break when he was asleep, and should not have been asleep in any case while alone in the boiler room.

could occur if the boilers malfunctioned and such malfunction was not noted.

Respondent is entitled to retain in its employ in such critical positions as a stationary engineer, an employee who it may rely on to properly operate such important and potentially dangerous pieces of equipment as boilers. Respondent is similarly entitled to discharge someone who cannot be trusted to remain awake at a time when he is responsible for the operation of such equipment. *Alcoholics Anonymous World Services*, 288 NLRB 582, 587 (1988); *PPG Industries*, 251 NLRB 1146 (1980).

General Counsel alleges that Treyball's discharge constituted disparate treatment, in that other employees were given less severe discipline for sleeping while on duty. The principal case relied upon by General Counsel is that concerning employee Sigismund Peters. Peters, who was not a licensed stationary engineer, was employed as a fireman on the night shift at Caledonian Hospital, with the same responsibilities—to monitor and operate the boilers as Treyball. In December, 1985, Frankenstein was called at home on a Sunday night by a nursing supervisor. Frankenstein was told that they had been unable to locate Peters for 1-1/2 to 2 hours, and that the boiler room was locked. Frankenstein drove to the hospital from his home on Long Island, a 45-minute trip, unlocked the boiler room door and found Peters asleep. The high pressure boilers were not running. Frankenstein stated that he wanted to discharge Peters, which action was approved by Luebker, but rejected by N. Costello, the director of personnel. Frankenstein then recommended a 30-day suspension, but Costello would only permit a 3-day suspension. Frankenstein then transferred Peters to the day shift where he could be watched more carefully.

In May 1986, Peters was discourteous to the director of the respiratory therapy department, and delayed giving that person a key to restore electrical power to that department. Frankenstein again recommended his discharge, but the personnel department again rejected this serious action. Frankenstein explained his issuance of a "final warning" rather than a "discharge" notice to Treyball on the day of the incident on the ground that his past experience with the personnel department caused him to believe that it would not agree with his decision to discharge Treyball. However, at the time of the Treyball incident, a new personnel department director, Myhre, was employed, who, citing Respondent's policy that sleeping during worktime is an offense which may be punishable by summary discharge, agreed with the recommendation to terminate Treyball.

Accordingly, an acceptable explanation has been given by Frankenstein as to why he recommended a "final warning" immediately after finding Treyball asleep in the boiler room. General Counsel argues that a "final warning" was the most severe discipline that Frankenstein intended to impose on Treyball, but somehow the warning was upgraded in severity to "discharge" due to Treyball's union activities. No unlawful nexus between the recommendation for final warning and the discharge of Treyball has been proven. The only connection between the two is the different view of the severity of the offense by the new personnel director, Myhre. Accordingly, although the offenses involving Peters and Treyball are virtually indistinguishable, I find that Respondent has established a reasonable basis for the different treatment accorded the two employees.

General Counsel's other instance of disparate treatment involved a warning notice issued to a housekeeping employee 5 days after Treyball's discharge. The housekeeping worker had been found asleep in a porter's closet with the lights out. She had been employed by Respondent for not more than 1-1/2 years at that time. The two cases are easily distinguishable. The housekeeping worker was not responsible for the operation of the boilers. Her dereliction of duty was much less severe than Treyball's.

I accordingly find and conclude that Respondent has shown that it would have discharged Treyball in the absence of his union activities. I will therefore recommend that the allegations of the complaint alleging his unlawful discharge be dismissed.

CONCLUSIONS OF LAW

1. The Respondent, The Brooklyn Hospital-Caledonian Hospital, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

2. Local 1199, Drug, Hospital & Health Care Employees Union, Retail, Wholesale and Department Store Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening its employees with discharge in order to discourage them from giving any support and assistance to the Union, and from selecting the Union as their bargaining representative, Respondent violated Section 8(a)(1) of the Act.

4. By confiscating from its employees' work areas, leaflets and other literature which expressed support for the Union, Respondent violated Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent has not violated the Act, as alleged in the complaint, by discharging and failing and refusing to reinstate its employee Norman Treyball.

7. Respondent has not violated the Act, as alleged in the complaint, by creating an impression among its employees that their activities on behalf of the Union were under surveillance by Respondent.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I make the following recommended⁸

ORDER

The Respondent, The Brooklyn Hospital-Caledonian Hospital, Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

⁸If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Threatening its employees with discharge in order to discourage them from giving any support and assistance to Local 1199, Drug, Hospital & Health Care Employees Union, Retail, Wholesale and Department Store Union, AFL-CIO.

(b) Confiscating from its employees' work areas, leaflets and other literature which expressed support for Local 1199.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility at 10 St. Paul's Place, Brooklyn, New York, copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

⁹If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) Notify the Regional Director for Region 29 within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten our employees with discharge, in order to discourage them from giving any support and assistance to Local 1199, Drug, Hospital & Health Care Employees Union, Retail, Wholesale and Department Store Union, AFL-CIO, and from selecting Local 1199 as their bargaining representative.

WE WILL NOT confiscate from our employees' work areas, leaflets and other literature which expressed support for Local 1199.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

THE BROOKLYN HOSPITAL-CALEDONIAN HOSPITAL